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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/341,241 09/14/99 DUFUIS

C 2350-73

EXAMINER

HM12/0508

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ART UNIT

PAPER NUMBER

1619

DATE MAILED:

05/08/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

09/341,241

Applicant(s)

DUPUIS ET AL.

Examiner

Shahnam Sharareh

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1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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DETAILED ACTION

Applicant's election of (meth)acrylic acid/ ethyl acrylate/ polyoxyethyleneated stearyl methacrylate copolymers and (C 8 – C 22) alkyl polyglycoside as surface active agent is acknowledged. Accordingly, the search is directed to the elected species. Examiner further states that there was no requirement for an election of insoluble conditioning agent. Claims 1-14 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-14, the recitation of "characterized in that it comprises" in claim 1, "characterized in that" (in claims 2-14) and "characterized in that it additionally comprises" (in claim 5, 14) are vague. It is not clear how the instant composition is characterized or limited. Applicant is urged to use standard transitional phrases consistent with US practice. See MPEP 2111.03.

In claim 1, it is not clear what is an "of type acrylic with a hydrophobic chain", "non-ionic type".

In claims 1, 2, 4, 6, 7, the term "type" is relative. The metes and bounds are not clear.

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In claim 4, the phrase "chosen from optionally" is improper markush language. In claim 7, 11, 13, the phrase "chosen from" is improper markush language. The correct language is "selected from a group consisting of". Correction is requested.

In claim ⁹~~14~~, the recitation of isohexadecane and its isomers" and "isoicosane and their isomers" is vague. The metes and bounds are not clear as to which isomers are claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1-2, 5-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Guerrero et al US Patent 5,236,710.

Guerrero et al disclose cosmetic compositions comprising non-crosslinked copolymers of acrylic type with a hydrophobic chain (see col 2-3, example 1), at least one surface active agent of the non-ionic type such as an alcohol such as stearyl alcohol etc..., and at least one insoluble conditioning such as silicone surfactants agent, all within the ranges of the instant claims (see abstract, col 3, col 4 lines 30-67, example 1). Thus, Guerrero meets the limitations of the instant claims.

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Claims 1-2, 4-5, 7-8, 14 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0507 693 ('693).

'693 patent discloses an emulsion comprising 0.2% copolymers of acrylic type, 3% dimethicone, 2% Span 80 and other conventional cosmetic adjuvant (see example 1 page 3, page 2 lines 56-68). Thus, '693 meets the limitations of the instant claims.

Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Amalric et al US Patent 5,670,471.

The instant claims are directed to compositions comprising (meth)acrylic acid/ ethyl acrylate/ polyoxyethyleneated stearyl methacrylate copolymers and (C 8 – C 22) alkyl polyglycoside as surface active agent and at least one insoluble conditioning agent.

Amalric et al disclose emulsions comprising Acrysol 22 within about 2-3 wt% of the total composition (Acrysol is a (meth)acrylic acid/ ethyl acrylate/ polyoxyethyleneated stearyl methacrylate copolymer see col 5, line 54), a polyglycoside surfactant (col 1, lines 65-67; col 2, lines 1-37; col 3, lines 10-15) and a conditioning agent. Amalric composition can further comprise a silicone oil compound, various amphoteric surfactants, nonionic surfactants, at least one fatty alcohol and other conventional compositions, (see col 3-4, examples 1-5, 12, 13, claims 1, 5, 6-, 16, 17). Thus Amalric meets the limitations of the instant claims.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose


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telephone number is 703-306-5400. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1123.

ss
May 6, 2001


DIANA DUDASH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600